

## **COMMUNITY AFFAIRS COMMITTEE**

DATE: May 18, 2005

CALLED TO ORDER: 5:04 p.m.

ADJOURNED: 5:30 p.m.

### **ATTENDANCE**

#### **ATTENDING MEMBERS**

Greg Bowes, Chair  
Patrice Abdullah  
Ginny Cain  
Susie Day  
Joanne Sanders  
Scott Schneider

#### **ABSENT**

Rozelle Boyd

## **AGENDA**

PROPOSAL NO. 174, 2005 - approves an increase of \$2,300,150 in the 2005 budget of the Marion County Auditor (County General Fund) to make a payment for the housing of juvenile inmates, funds transferred from the Children's Psychiatric Residential Treatment Fund to the County General Fund (IC 12-19-7.5-33)

## **Community Affairs Committee**

The Community Affairs Committee of the City-County Council met on Wednesday, May 18, 2005. Chair Greg Bowes called the meeting to order at 5:04 p.m. with the following members present: Patrice Abdullallah, Ginny Cain, Susie Day, Joanne Sanders, and Scott Schneider. Absent was Rozelle Boyd.

PROPOSAL NO. 174, 2005 - approves an increase of \$2,300,150 in the 2005 budget of the Marion County Auditor (County General Fund) to make a payment for the housing of juvenile inmates, funds transferred from the Children's Psychiatric Residential Treatment Fund to the County General Fund (IC 12-19-7.5-33)

Dan Jones, Budget Deputy, Marion County Auditor's Office, stated that this proposal is to request additional appropriations out of the General Fund of \$2,300,150 to pay outstanding bills for the corrections and reformations of juveniles in State institutions. The source of the funding for this appropriation is a transfer from the Children's Psychiatric Residential Treatment Fund. That fund was created in the 2003 Legislature and was formed as a transfer of appropriations and tax rates from the Office of Family and Children Fund. Last year, there was only a few thousand dollars worth of expenses but the levy that went into the fund was about \$2.4 million. He also stated that according to Indiana Code 12-19-7.5-33, the Auditor must transfer that ending fund balance minus one-half of the actual cost that was incurred the previous year and transfer to the General Fund between January 1, 2005 and March 31, 2005, which has been done. Mr. Jones stated that now they have to get an appropriation in order to use those funds to pay for part of the charges for the cost of the juveniles in State institutions.

Chair Bowes asked if the transfer is something that the Auditor does without the Council's approval. Mr. Jones answered in the affirmative.

Chair Bowes referred to Section 33 step 2, and asked how it was calculated and with what numbers were the basis for one-half of the actual cost. Mr. Jones stated that the total levy for the fund is approximately \$2.3 million to \$2.4 million. Last year was the first year for the fund and it incurred very little expense because most vendors and service providers did not know how to use the resources. There was only \$30,468 that was actually spent, so we have to subtract one-half of that expense from the previous year from the fund balance and transfer the remainder to the General Fund.

Chair Bowes said his understanding of the statute can be calculated two ways: One way is to say how much can we actually spend and take half of that; and the other way that might also be anticipated under the statute would be to take the cost that we would have to spend to care for all those children who needed treatment. If you had 100 kids who needed psychiatric treatment and we only treated one, would you base the cost on the one or the 100. Mr. Jones answered would be based on the actual cost provided.

Councillor Sanders stated that she does not understand taking one-half of the cost and deducting that from the remaining fund balance. She asked what happens to the other half of the cost. Mr. Jones stated that according to statute, the reason to take half is to provide

a minor balance in the fund so that the entire amount is not transferred to the General Fund.

Councillor Sanders stated that at this point, the fund balance would be around \$15,000. Mr. Jones stated that at the beginning of the year it is roughly \$15,000. Councillor Sanders also asked if this year's actual appropriation for this fund is still at the level of the \$2.4 million. Mr. Jones answered in the affirmative.

Chair Bowes stated that in Section 5 of the statute, "the following shall constitute the Children's Psychiatric Residential Treatment Fund," the first part is property taxes that were levied to support this fund, and the second was all grants and aid received from the Federal and State Government. He asked how much was received from the State and Federal that is a part of the calculations for the money. Mr. Jones stated that all the revenues received last year are in the form of property, excise, commercial vehicle excise taxes, and financial institutions. No other forms of revenue were received, and some are in the form of a reimbursement and would not receive anything until some money has been spent.

Chair Bowes stated that at an earlier meeting there was talk about how we may come up against a \$15 million shortfall on services we provide through the Office of Family and Children. He asked if we should use this certain fund to try and bail out the problems or if we should give it over to the State. He also asked how this fund relates to the other projected shortfall and if there is an opportunity to use the money to take care of it. Mr. Jones stated that the statute requires the balance at the end of the year to be transferred to the General Fund, which is the fund that we pay the Department of Corrections (DOC) charges and the Family and Children Fund operates independently. Mr. Jones stated that the Office of Family and Children requested an additional levy last year and it was not granted, which is the cause of the deficit this year.

Councillor Sanders stated that the statute that exists is in conflict with a ruling that State Attorney General Steve Carter made one year ago. His ruling stated not to pay because of a constitutional issue that is unresolved, and if we pay now we are giving up our argument relative to the issue. She also asked if there is a conflict between the State statute that demands payment made and Attorney General Carter's ruling. Mr. Jones stated that it is possible some conflict and a court case would have to decide.

Councillor Sanders asked if there was a court case filed. Mr. Jones stated that a court case was filed on behalf of the County Treasurer in response to a case filed by the State Budget Agency, and both were withdrawn at the request of the Attorney General. Those cases and action followed the State trying to withhold the County Option Income Tax to counties, and that action was deemed illegal. The State statute is specific on the direction of those revenues.

Councillor Sanders asked if the Attorney General requested both parties to withdraw their cases, but has not resolved the constitutionality of the issue. Mr. Jones answered in the affirmative. Councillor Sanders stated that she is not comfortable with making a payment under the circumstances. Mr. Jones stated that he does not think the Attorney General is

contemplating making a decision or an opinion on the constitutionality of it. He also stated that it might take a court case to decide.

Councillor Abdullah asked if there was a fund set up to offset the payments of those juveniles that need the treatment and support coming through the system. He also asked if there is a way to counteract taking away from the fund. Mr. Jones stated that he could not answer that question at this time. He suggested that Dan Carmin, Director, Marion County Family and Children or the juvenile court judge could better answer that.

Councillor Schneider asked if the Children's Psychiatric Residential Treatment Fund was mandated by State Legislature in the 2003 General Assembly and also asked how it was funded. Mr. Jones stated that it was a transfer of property tax rates from the Family and Children Fund. Councillor Schneider asked if the transfer was done in the first quarter of 2005. Mr. Jones answered in the affirmative.

Councillor Abdullah asked if this has to be done at this moment. He also asked if there is a way to study the request before acting on it. Mr. Jones stated that the transfer already took place at the beginning of the quarter. The actual payment to the State, according to the statute, does not specify when the payment has to be made.

Councillor Abdullah asked whether the committee did not have enough time to study the proposal to make sure we know the appropriate way to handle the money. Mr. Jones stated that the appropriations itself, does not have a specific time frame but, should be done within the same quarter.

Councillor Sanders asked Mr. Jones if he has spoken with other counties to determine what they have done relative to the statute. Mr. Jones answered in the negative. Councillor Sanders stated that at one time there were some discussions in which various counties were going to go together and try and address this issue both at the Psychiatric care level, as well as the overall DOC payments. Mr. Jones stated that he talked to another county regarding the DOC payment in this fund, and they suggested we increase the rate to the fund to pay the entire bill. He also said that this fund is outside of the maximum levy control that was in place until last year.

Councillor Sanders stated that she is concerned that this is a way of increasing property taxes and that we do not have an overall plan for the total DOC charges. Mr. Jones stated that in the statute, there are a couple of plans that can be devised. Councillor Sanders asked if we, as a County, have a plan and what time frame do we have to get one together. Mr. Jones stated that we do not have a plan, and that we have until July 2005 to reach a payment plan with the State Auditor.

Kobi Wright, Attorney, Corporation Counsel stated that our payment plan, if the County believes that it is a legal debt of the County would have to enter into a payment plan with the State by August 15, 2005. He also stated that the law in itself becomes effective in July 2005. In terms of an agreement made with the State and with other counties that have an

outstanding debt, they would have to reach an agreement by August 15, 2005. He also stated that he does not believe it is a legal debt of the County.

Mr. Wright stated that he agrees with Mr. Jones stating that the statute concerning the balance of the Children's Psychiatric Residential Treatment Fund, does not have to be appropriated by a certain time. Chair Bowes asked Mr. Wright if he could explain why he does not believe this is a valid debt. Mr. Wright stated that this is not the first time the issue has been raised. The prior Treasurer of the County raised the issue a couple of years ago in a lawsuit against the State. Corporation Counsel has been looking at the issue and is at a point where they are reaching a conclusion. He also stated that it is very unclear whether or not the statute, which requires counties across the state to pay for half of the juvenile costs that are billed from the State, is a valid statute. He stated that all of the statutes that deal with those payments would be invalid as well. He also said that in order to get a resolution on the matter it would require pursuing litigation, and that is something they are considering.

Chair Bowes asked if we were to follow through to appropriate the \$2.3 million, how that would affect the strength of any lawsuit being considered regarding challenging the statute. Mr. Wright stated that if the County was to sue the state for any payments made, it would constitute a waiver of legal arguments to the extent that the statute is not valid.

Chair Bowes asked if we are talking about the same statute that relates to the State having the different counties to pay half of the DOC bill. Mr. Wright stated that if there is no valid obligation for the County to pay for the juvenile correctional costs, then that statute would be invalid as well.

Councillor Sanders moved, seconded by Councillor Abdullaah, to postpone Proposal No. 174, 2005 until September 6, 2005. Motion carried by a 6-0 vote.

With no further business pending, and upon motion duly made, the Community Affairs Committee of the City County Council was adjourned at 5:30 p.m.

Respectfully submitted,

Greg Bowes, Chair  
Community Affairs Committee

GB/law.